

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

SIMPLIVITY CORPORATION,

Plaintiff,

v.

SPRINGPATH, INC.,

Defendant.

C.A. NO. 4:15-cv-13345-TSH

Oral Argument Requested

**DEFENDANT SPRINGPATH, INC.'S MOTION TO DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE
12(B)(6)**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant Springpath, Inc. ("Springpath") respectfully moves to dismiss Plaintiff SimpliVity Corp.'s ("SimpliVity") Second Amended Complaint. SimpliVity opposes this motion.

As set forth in the accompanying Memorandum of Law, SimpliVity's Second Amended Complaint fails to state a claim for patent infringement, whether direct or indirect, under governing law. SimpliVity's Second Amended Complaint also fails to state a claim for entitlement to injunctive relief. Therefore, the Second Amended Complaint should be dismissed in its entirety. Furthermore, because SimpliVity was previously on notice of these defects in its pleadings but failed to correct them in the Second Amended Complaint, the Second Amended Complaint should be dismissed with prejudice.

WHEREFORE, Springpath respectfully requests that the Court GRANT this Motion and DISMISS SimpliVity's Second Amended Complaint with prejudice in its entirety.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Springpath respectfully requests that the Court hear oral argument regarding this Motion. This Motion presents complex questions regarding both patent law and civil procedure, and Springpath believes that oral argument would assist the Court in resolving the issues presented.

Dated: February 26, 2016

Respectfully Submitted,

/s/ Louis W. Tompros

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Counsel for Defendant Springpath, Inc.

RULE 7.1(A)(2) CERTIFICATION

Pursuant to Local Rule 7.1(A)(2), I hereby certify that on February 25, 2016, counsel for Springpath conferred with counsel for Plaintiff SimpliVity Corporation in a good faith effort to resolve or narrow the issues presented in the foregoing motion. Counsel for SimpliVity advised that they oppose this motion.

/s/ Anant Saraswat

Anant Saraswat

CERTIFICATE OF SERVICE

I, Anant Saraswat, hereby certify that a true copy of the attached was served upon the attorney of record for each other party through the Court's CM/ECF system on February 26, 2016.

/s/ Anant Saraswat

Anant Saraswat